IN THE HIGH COURT OF DELHI AT NEW DELHI

CM(M) No.879/2006

M/s. RKKR Steels Ltd . ..... Petitioner
! through: Mr. Virender Goswami, Advocate with
Mr. Sandip Mahapatra, Advocate

VERSUS

$ M/s. Virender Paul Daga (HUF) & Anr. ..... Respondents
^ through: Mr. Harish Malhotra, Sr. Advocate with
Mr. Tanuj Khurana, Advocate for R1
Mr. Rajat Singh Jain, Advocate for R2

% **D**ATE OF DECISION: 02-05-2007

CORAM:
* Hon'ble Mr.Justice Pradeep Nandrajog

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?

3. Whether judgment should be reported in Digest?

: PRADEEP NANDRAJOG, J. (Oral)

1. I would be referring to the petitioner as defendant no.1 and to respondent no.1 as the plaintiff. Respondent no.2 was defendant no.2.

2. Admitted fact on which neither plaintiff nor defendant no.1 are at variance is that on 25.9.1985 an agreement to sell was executed pertaining to a plot bearing no.95, Block B-2, Mohan Cooperative Industrial Estate, New Delhi. Plaintiff was the

purchaser. Defendant no.1 was the seller.

3. The agreement to sell did not result in a sale deed being executed. Plaintiff filed a suit, predicating a claim under the agreement. The suit was captioned as:-

> "SUIT FOR POSSESSION BY SPECIFIC PERFORMANCE OF THE AGREEMENT TO SELL AND FOR PERPETUAL INJUNCTION".

4. After pleading what plaintiff thought were the essential facts, prayer made was as under:-

> "19. That the plaintiff prays that
>
> (a) a decree for possession by specific performance of the Agreement to Sell dated 25.9.85 may be passed in favour of the plaintiff against the defendant no.1,
>
> (b) A decree by issue of perpetual injunction may be passed in favour of the plaintiff against the defendant no.1 restraining the defendant no.1 from taking possession of the property in dispute i.e. plot No.95 in Block-B-II in the area of Mohan Cooperative Industrial Estate Ltd. near Badarpur, Mathura Road, New Delhi,
>
> (c) Costs of the suit be awarded to the plaintiff against the defendant no.1.
>
> (d) Any other relief that the court deems fit may also be granted."

5. Various defences were raised. Issues were framed. Parties led their respective evidence. Arguments were concluded. Judgment was reserved.

6. It appears that defendant no.1 argued that the plaintiff's suit sought a decree for possession by specific

performance of the agreement to sell dated 25.9.1985. Thus, it was argued that the plaintiff cannot split up the agreement to only claim relief of possession by specific performance and not claim specific performance of the entire agreement. It was urged that the specific performance of the agreement to sell is impossible as no sale deed pursuant thereto could ever by executed. It was pleaded that the plaintiff had not become a member of the Mohan Cooperative Society, a sine qua non before which plot could be transferred for the reason under the document of title in favour of defendant no.1 there was a specific covenant that the plot could be transferred only in favour of such person who was a member of Mohan Cooperative Industrial Estate.

7. Various other submissions were made.

8. Before judgment could be pronounced an application under Order 6 Rule 17 of the Code of Civil Procedure was filed by the plaintiff. Amendment prayed for was deletion of the words *“possession by*" from the cause title of the suit as also in prayer clause 'A' of para 19 of the plaint.

9. Impugned order has permitted the said amendment. Effect thereof is that the cause title of the suit, as amended, reads as under:-

"Suit for specific performance of the agreement to sell and for perpetual injunction."

10. Prayer clause 'A' reads as under:-

"A decree for specific performance of the agreement to sell dated 25.9.1985 may be passed in favour of the plaintiff and against the defendant no.1."

11. A three fold contention has been urged before me.

12. First contention urged is that after arguments were advanced and matter was reserved for judgment, no application under Order 6 Rule 17 would lie.

13. Analogy of Order 9 Rule 7 has been resorted to.

14. Second contention urged is that the amendment has resulted in introduction of an entirely different cause. Clarifying and elaborating the contention, learned counsel for defendant no.1 urges that a suit which was limited in relief seeking only decree for possession by specific performance of the agreement stands converted into a suit for specific performance of the agreement. It is thus urged that not only has new cause of action been inserted but the fundamentals of the suit have been altered.

15. Last contention urged is that a time barred claim has been permitted to be raised. It is urged that where a claim has been barred by limitation, the same cannot be permitted to be included in a plaint by way of an amendment thereof.

16. It would be advisable to refer to the pleading in the

plaint lest a semantic or syntactical approach clouds the real issues between the parties.

17. It is trite that a prayer clause in a suit takes colour from the pleadings in the main body of the plaint.

18. A perusal of the plaint shows that after stating the relevant facts pertaining to the agreement to sell dated 25.9.1985, facts have been pleaded as to why defendant no.1 gave possession of the property in question to defendant no.2, stated to an associated firm of the plaintiff. It has been pleaded that the stated sale consideration was Rs.4.50 lacs and since Rs.50,000/- was paid at the time of execution of the agreement to sell, balance sale consideration payable was Rs.4 lacs. It has been pleaded that interest @ 15% per annum on balance sale consideration of 4 lacs gives a monthly interest of Rs.5,000/-. It is pleaded that since sale consideration of Rs.4 lacs was deferred but possession handed over to an associated firm of the plaintiff, a tenancy document was created wherein possession of the suit property to given to defendant no.2 on payment of Rs.5,000/- per month as ostensible rent.

19. It was pleaded that in the manner aforesaid, interest of both parties stood adequately protected. Defendant No.1 lost possession but got interest @ 15% per annum on the balance sale

consideration, till the same was paid. Plaintiff through its associate firm got possession.

20. After pleading the facts in respect of the dispute between the parties, an attempt has been made in the plaint to justify the stand of the plaintiff.

21. Concluding the pleadings in para 12 by stating that defendant no.1 has no right to avoid or cancel the contract and is bound by the same, in para 13 and 14 of the plaint, it is pleaded as under:-

> "13. That the plaintiff has always been and still is and willing to specifically perform the agreement on his part.
>
> 14. That the plaintiff is entitled to a decree of specific performance against the defendant no.1."

22. In para 18 of the plaint, pertaining to relief for specific performance, following assertions have been made:-

> 18. That the value of the suit for purpose of court fee and jurisdiction is Rs.4,50,000/- for the relief of specific performance on which Court fee stamp of Rs.6,736/- has been paid and for the relief of perpetual injunction is fixed at Rs.130/- on which the court fee stamp of Rs.13/- has been paid."

23. From the main body of the plaint, it stands out that all material and necessary averments pertaining to a suit for specific performance of an agreement to sell relating to immovable property have been pleaded. Further, court fee paid is on the stated sale consideration and not on the market value of the

property, as is normally paid in a suit for possession.

24. Answering the three submissions made by learned counsel for defendant no.1, stand predicated on the analogy of Order 9 Rule 7 CPC is to be noted and rejected for the simple reason Order 9 Rule 7 of the Code of Civil Procedure applies where the Court has deferred the hearing of the suit ex-parte.

25. The two words "*the hearing*" are important. In reference to the said two words, Order 9 Rule 7 of the Code of Civil Procedure has been interpreted to mean that the right under Order 9 Rule 7 CPC enures till the hearing of a suit is on. Meaning thereby the moment hearing concludes, right under Order 9 Rule 7 is lost.

26. The Code of Civil Procedure as existed prior to 1.7.2002 did not envisage oral arguments. Thus, where evidence was closed by the parties, it was treated to be a case of hearing being closed. In a situation where judgment had yet to be pronounced, it was held that the defendant had to await a judgment and seek setting aside of the decree, if against him, under Order 9 Rule 13 of the Code of Civil Procedure. With the introduction of Sub Rule 3 A in Rule 2 of Order 18 of the Code of Civil Procedure with effect from 1.7.2002 by and under Act No.46 of 1999, a provision has been made creating a right in the parties

to address oral arguments, a right which hithertofore was being granted by the courts as a matter of courtesy, intended to seek assistance from learned counsel appearing for the parties.

27. But, Order 9 Rule 7 CPC, nor analogy thereof is appropriate to consider Order 6 Rule 17 of the Code of Civil Procedure for the simple reason Order 6 Rule 17 of the Code of Civil Procedure does not contain the words "*the hearing*".

28. On the contrary, Order 6 Rule 17 of the Code of Civil Procedure uses the expression "*at any stage of the proceedings"*.

29. Proceedings pertaining to a suit terminate under Order 20 of the Code of Civil Procedure where the court, after hearing a matter, pronounces a judgment.

30. Thus, as long as a judge is seized of a matter and has not pronounced judgment, Order 6 Rule 17 would apply to the proceedings.

31. On the twin issue whether there has been either a substitution of a cause of action or has there been a modification of the cause of action couped with the issue whether the amendment allowed has permitted a time barred claim to be inserted, as the issues overlap, I deal with second and third submission made, unifying a consideration pertaining to the two.

32. As observed by me, a prayer clause takes meaning and

colour from the substance of the plaint. Further, a plaint has to be read meaningfully and not in a pedantic manner.

33. Semantics and syntactical analysis has no place in reading and understanding pleadings. Pleadings have to be read meaningfully. I have extracted hereinabove averments made in para 13 and 14 of the plaint. I have noted hereinabove, in a precise form, pleadings as originally laid.

34. Meaningfully read, it is apparent that the plaintiff has brought a suit seeking specific performance of the agreement to sell.

35. Since the agreement in question relates to an immovable property, Section 55 of the Transfer of Property Act 1882, dealing with the rights and liabilities of the buyer and the seller would be attracted. Clause f of Sub Section 1 of Section 55 of the Transfer of Property Act 1882 enjoins upon the seller to give, on being so required by the buyer, such possession of the property as its nature admits.

36. It appears that the counsel for the plaintiff, while drafting the plaint referred to and prayed for a decree requiring and calling upon the court to pass a decree for possession by specific performance of the agreement. In my opinion, the prayer clause cannot be split and read as if the prayer was restricted to a

decree for possession alone.

37. The inappropriateness in the prayer clause has to be straightened with reference to the substance of the pleadings in the main body of the plaint.

38. Since a cloud was being cast upon the right of the plaintiff, with reference to the language of the prayer clause, the amendment was sought for. To my mind, the amendment clears the haze.

39. Neither has a new cause of action, much less a new cause been inserted. Nor has a time barred claim been inserted. In fact new claim has not been inserted at all. What was implicit has been made explicit.

40. The matter can be looked at from another angle. It is always open to the court to modify the relief, keeping in view the averments in the pleadings of the parties, the facts proved and the law attracted. Thus a wrong prayer or a prayer imperfectly stated would not be a hindrance in the court's power to do justice. Pleadings are referred to as the main body of the plaint.

41. The petition is dismissed.

42. No costs.

May 2, 2007 **PRADEEP NANDRAJOG, J.**
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